

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MINNESOTA

3 In Re: St. Jude Medical, Inc. 01-MD-1396 JRT/FLN
4 Silzone Heart Valves Products
Liability Litigation.

5

6 Minneapolis, Minnesota
7 November 12, 2002
5:20 p.m.

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9 TRANSCRIPT OF PROCEEDINGS
10 (Status Conference)

11 BEFORE THE HONORABLE JOHN R. TUNHEIM,
12 UNITED STATES DISTRICT COURT JUDGE.

13 APPEARANCES:

14 On behalf of plaintiffs: James T. Capretz
(via telephone)
15 Steven E. Angstreich
J. Gordon Rudd, Jr.
16 Daniel W. Sigelman
David T. Butsch

17 On behalf of defendant: Steven M. Kohn
18 David E. Stanley
Tracy J. Van Steenburgh
19 Liz Porter

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24 Court Reporter: Karen J. Grufman
U.S. Courthouse, Suite 1005
Minneapolis, MN 55415
25 612-664-5105

1 THE COURT: Good afternoon. On the Court's calendar
2 this afternoon is civil case 01-1396, In Re: St. Jude Medical,
3 Incorporated, Silzone Heart Valves Products Liability
4 Litigation.

5 Counsel, would you note your appearances, please?

6 MR. ANGSTREICH: Steven Angstreich for the class.

7 MR. RUDD: Gordon Rudd for the class.

8 MR. BUTSCH: David Butsch for Class II.

9 MR. SIGELMAN: Daniel Sigelman for the class. Well,
10 actually, for the Steering Committee.

11 MR. STANLEY: David Stanley for St. Jude Medical.

12 MR. KOHN: Steven Kohn for St. Jude Medical.

13 MS. PORTER: Liz Porter in-house counsel for St.
14 Jude Medical.

15 MS. VAN STEENBURGH: Tracy Van Steenburgh for St.
16 Jude Medical.

17 THE COURT: Good afternoon to all of you.

18 MR. ANGSTREICH: Your Honor, you also have Mr.
19 Capretz on the phone.

20 MR. CAPRETZ: Hello, Judge.

21 THE COURT: Good afternoon, Mr. Capretz. You're not
22 on a train, are you?

23 MR. CAPRETZ: I'm not in an exotic spot under the
24 English Channel. I'm sitting here in a dataport at the
25 airport in Cincinnati this evening.

1 THE COURT: Okay. That's fine with us.

2 Are you proceeding, Mr. Angstreich?

3 MR. ANGSTREICH: Yes, I am, Your Honor.

4 THE COURT: Okay.

5 MR. ANGSTREICH: Your Honor, you have the joint
6 status conference report that we've submitted. We made a lot
7 of progress over a lot of the issues that are identified here.
8 We're continuing to make more progress. As Your Honor will
9 see, a lot of the items that we've requested have been agreed
10 to be produced. Some, the position is that they've been
11 produced. We're still not convinced of that fact. And we're
12 going to continue to search the database to ascertain whether
13 or not they've been produced.

14 A couple of the issues that still remain, however, relate
15 to copies of answers to interrogatories that were provided in
16 the Ramsey County cases. I was just advised that they will be
17 produced, they will be provided.

18 We had asked for the board of directors and executive
19 committee minutes. And while I am loathe to agree with
20 opposing counsel, it's quite possible that our description was
21 overbroad. And consequently, we will be tailoring it to
22 Silzone products within the relevant time period. We will be
23 providing them with a formal request. Mr. Stanley has assured
24 me that they will respond well within the 30 days, hopefully
25 more quickly than that, and that we will get any documents

1 that exist with respect to that.

2 THE COURT: Very good.

3 MR. ANGSTREICH: The Sulzer Carbomedics matter,
4 notwithstanding a letter to Your Honor and my response, where
5 I invited Mr. Lewis to communicate with me, and give us an
6 opportunity to try to work things out, he has not. We're in
7 the process of preparing the motion. We will bring it before
8 Your Honor, although I think Mr. Lewis's expectation is that
9 we will go to Texas. And we don't intend to do that at this
10 point, Your Honor.

11 We have been more than willing to provide a
12 confidentiality order. We did that with Spire. We're more
13 than willing to pay for the copying of the materials, once we
14 select them and have an opportunity to review them. We're
15 just unwilling to pay for that employee. And we'll give Mr.
16 Lewis an opportunity to tell Your Honor why under the rules we
17 are obligated to do that.

18 There was an issue that arose at the Costerton
19 deposition. There is a different view on whether or not the
20 deposition was truly a document deposition, or there was an
21 attempt at asking substantive questions. Mr. Stanley and I
22 have a different opinion on the scope of it. But I think
23 we're both agreed that there will not be an expert deposition
24 of Doctor Costerton; that it is to be limited to a document
25 inspection.

1 However, there is an issue that we do want to address
2 with Your Honor.

3 It is our belief, and unless Your Honor tells us
4 otherwise, that counsel who participate in depositions in this
5 matter should be counsel who have appeared before Your Honor
6 and who we know are parties to this process.

7 The attorney that took the deposition of Doctor Costerton
8 is, quote, entered in the Fox case, which is out of Colorado.
9 But he has never appeared before this Court, and has never
10 submitted a pleading in this Court.

11 And we believe that it is inappropriate for counsel who
12 have no contact with this case, other than being defense
13 counsel in the case that was originated out of Colorado, or
14 New Jersey, or whatever it is, to become involved in these
15 proceedings. They're not familiar potentially with all of the
16 pretrial orders and the ground rules.

17 And we should have a direction that they at least enter
18 their appearance in this proceeding on behalf of St. Jude, and
19 that we know who they are. I don't think that that's an
20 unreasonable request going forward.

21 I was not there, but Mr. Murphy was there. And suffice
22 it to say that Mr. Murphy was not of my bend, because I would
23 not have allowed this gentleman to proceed, since I didn't
24 know who he was and why he would have a right to represent St.
25 Jude in this MDL.

1 THE COURT: Is he with a Colorado law firm?

2 MR. CAPRETZ: Yes, that's right, Your Honor.

3 MR. KOHN: That's right, Your Honor. If I could be
4 heard on this issue. It goes beyond this one deposition.

5 THE COURT: Sure.

6 MR. KOHN: Mr. Socha, who took the deposition, is
7 St. Jude's local counsel in Colorado --

8 THE COURT: Solhow?

9 MR. KOHN: S O C H A, it's spelled. Charles Socha.
10 And he is of record in one of the cases that's in the MDL, the
11 Fox case.

12 The reason this issue goes beyond, however, this one
13 deposition is that over the next several months, we intend to
14 take as many as a hundred depositions in these cases in the
15 local jurisdictions of plaintiffs, of implanters and
16 explanters, of cardiologists. And our intention is to have
17 those depositions taken by the attorneys who represent St.
18 Jude in those venues.

19 So that was why Mr. Socha was geographically closest to
20 where this particular deposition took place. But we'll be
21 taking depositions in New York, in Louisiana, and a whole
22 variety of other states. And we're not intending to have the
23 few people in this room, it would be physically impossible to
24 do that.

25 So if the Court wants us to provide a list of the names

1 of the attorneys, we'll be more than happy to do that. But it
2 was our understanding that since they were already of record
3 in cases before the MDL, that the Court already had
4 jurisdiction, and it wouldn't be necessary to do it.

5 MR. ANGSTREICH: Your Honor, if I might respond to
6 that.

7 This was an MDL deposition. This was not a deposition in
8 the Fox case. And I'm unaware of what right the defendant
9 would have to take hundreds of depositions in the MDL. If the
10 number of depositions is limited, the plaintiffs are limited
11 to 20 depositions, they certainly are not entitled to take
12 hundreds of depositions.

13 However, if those depositions relate to the individual
14 cases, and they're going to be noticed in those individual
15 cases, then we have no problem with that. But that's not what
16 happened here. This was an MDL deposition. And if it's an
17 MDL deposition, it ought to be with an attorney that is
18 participating in this proceeding.

19 So if there's a case pending in Texas, for example, and
20 as it has happened, Texas counsel down there attends, we have
21 no problem with that. But certainly, we need to monitor who's
22 involved in the MDL cases.

23 And also, I guess now we're going to need some guidance,
24 if the defendants really believe that they have the right to
25 take hundreds of depositions in the MDL while the plaintiffs

1 are limited to 20, we do need some guidance in that regard.

2 THE COURT: Mr. Kohn, are these all MDL depositions,
3 or are they local case depositions?

4 MR. KOHN: I really wasn't making a distinction. To
5 me, a case that is in the MDL, regardless of whether it's
6 venued in New York, is in the MDL.

7 THE COURT: But there are a lot of local state
8 course cases. Are you referring to them?

9 MR. KOHN: No, I'm referring to federal court cases
10 that are in this MDL that when they are remanded will go back
11 to other states. We have I think somewhere in the
12 neighborhood of 30 of those cases, and there may be as many as
13 five to as many as eight depositions in each one of those
14 individual cases that need to be taken before the discovery
15 cut-off. I'm talking about plaintiffs, possibly plaintiffs'
16 spouses, and a number of treating physicians in each of the
17 individual cases.

18 MR. CAPRETZ: Your Honor, may I add something?

19 THE COURT: You may, Mr. Capretz.

20 MR. CAPRETZ: We understand that St. Jude Medical
21 has instructed their local counsel to take the plaintiffs'
22 depositions along with the treating health care providers, all
23 prior to the December 31 year end date.

24 Now, in addition to the question that's being raised by
25 Mr. Angstreich and Mr. Kohn, I suggest, particularly with what

1 Mr. Kohn is saying, that over a hundred or thereabouts
2 depositions are being taken, it's going to create a
3 predicament as far as the smooth progress of the MDL
4 proceeding. Because several of us are involved in these
5 individual cases as well as the MDL.

6 And if they're planning on doing all of these depositions
7 before December 31, it's going to create quite an onerous
8 situation for the plaintiff. And yet I think the Court has
9 scheduled, and it is on the record, time in which they might
10 take the depositions and discovery of individual plaintiffs.

11 And I think it goes beyond December 31st.

12 So I do want the Court to be aware of that particular
13 discovery tactic and the burden that might be placed on the
14 plaintiff.

15 THE COURT: Mr. Angstreich, do you have something
16 else?

17 MR. ANGSTREICH: Yes, Your Honor.

18 Your Honor, there are individual cases, and they have a
19 right, each plaintiff has an obligation to put their case
20 together themselves, their treating physicians, any other
21 witnesses they may have. And those are not limited, nor will
22 they be evidence that will be offered in this MDL proceeding.

23 Unless each individual case winds up getting tried here,
24 and I didn't think that that was the process that was
25 happening, nor did I envision that any MDL attorney was going

1 to be attending an individual plaintiff's case deposition
2 unless it happened to be their own client whose deposition was
3 being taken.

4 But I think that there still has to be some guidelines.
5 If in the guise of taking depositions in an individual case
6 they're going to try to use that deposition in the MDL, then
7 they have to be limited to the number of depositions that the
8 plaintiffs are facing. I mean we really never envisioned that
9 they would notice a potential expert witness in some
10 individual case, and then try to use that in the MDL.

11 So to the extent that there are individual cases that are
12 being pursued by other plaintiffs' lawyers, we have no problem
13 with that. And that's not what we're talking about. We're
14 talking about any deposition noticed in the MDL. They have to
15 follow our PTO's. We need to know who's going to be there,
16 and that they are a participant in this proceeding. And there
17 has to be some guidelines and ground rules for the number of
18 those depositions.

19 I think that's all that we're talking about at this
20 moment.

21 MR. STANLEY: Your Honor, we're glad, in a generic
22 type deposition that Mr. Angstreich is talking about, if he
23 wants us to notify the Court and Mr. Angstreich in advance
24 that someone other than a lawyer from Crosby Heafey or Tracy's
25 firm will be doing the deposition, we have absolutely no

1 problem doing that.

2 As far as just addressing Mr. Capretz's concern, you
3 know, we want to take the plaintiff as soon as possible. That
4 deposition, usually we get a whole bunch of information from
5 that deposition which causes us to order more medical records.
6 And it's imperative that we try to get those types of
7 depositions done earlier rather than later.

8 And, you know, we're sitting here with 30 cases with a
9 discovery cut-off in April. And if we wait until the last
10 minute to do discovery on every one of those cases, we've got
11 Rule 26 reports, we've got all sorts of stuff that we have to
12 do.

13 So our efforts to take discovery sooner rather than
14 later, that's what we're trying to do, is trying to get ahead
15 of the game here so we're not crunched at the end and asking
16 for more time.

17 THE COURT: Well, that certainly makes some degree
18 of sense. I do think that we could coordinate this perhaps
19 best if there were a list of the depositions together with the
20 attorneys who you have assigned to ask the questions in those
21 cases, with sufficient time for Mr. Angstreich or Mr. Capretz
22 to raise objections to the Court if they think that a local
23 counsel is getting involved in matters that likely would come
24 before this Court.

25 I don't know if we can agree on some kind of reasonable

1 notice so that you have time to raise any matters by a
2 telephone conference with the Court. What would you say, Mr.
3 Angstreich?

4 MR. ANGSTREICH: Your Honor, so long as it's an MDL
5 deposition and we have five days notice, that's more than
6 sufficient time. And I don't need to be --

7 THE COURT: Is that okay, Mr. Stanley?

8 MR. STANLEY: It's fine, Your Honor. Again, I don't
9 think this is going to be a real issue.

10 THE COURT: Okay.

11 MR. ANGSTREICH: And to the extent that there are
12 plaintiff depositions that are going on, I would expect that
13 local counsel would handle it.

14 MR. STANLEY: And you have a list of all local
15 counsel anyway.

16 MR. CAPRETZ: Your Honor, if we could ask Mr.
17 Stanley to speak in -- I have no trouble hearing Mr. Kohn and
18 Mr. Angstreich, I can barely hear Mr. Stanley.

19 MR. STANLEY: I'll speak up.

20 THE COURT: Okay. Did you hear him that time, Mr.
21 Capretz?

22 MR. CAPRETZ: No, sir.

23 THE COURT: He just made a big concession to you --

24 MR. CAPRETZ: Oh, okay.

25 MR. STANLEY: All those requests you've made of me,

1 Jim --

2 MR. CAPRETZ: I yield to the gentleman.

3 THE COURT: Okay, we'll try to make sure we get in
4 front of the microphones.

5 MR. ANGSTREICH: Your Honor, the next issue relates
6 to the deposition of James Ladner, who is, or purports to be
7 as counsel for St. Jude, but who appears to have participated
8 in the Silzone matter to a degree beyond what appears to be
9 in-house counsel.

10 There has been an effort to try to limit the discovery
11 issues to, I believe it's three specific subject matters,
12 which we disagree that we should be so limited. There are a
13 number of times when Mr. Ladner participated along with others
14 in conference calls with third parties as to which there could
15 be no privilege.

16 THE COURT: Is he located here in the Twin Cities?

17 MR. ANGSTREICH: Yes.

18 MR. STANLEY: Yes, Your Honor.

19 MR. ANGSTREICH: And I gave an example of that to
20 Mr. Stanley, that we should have a right to find out from him
21 what he recalls and what was said. Mr. Stanley's position is
22 that we need to ask others first, the other people who were
23 participants in that conference call, to see whether or not we
24 could get the information from them.

25 The problem is that we have no assurance that Mr. Ladner

1 won't appear in a courtroom to testify about that meeting,
2 because it's clearly not a privilege meeting or a discussion,
3 and say something that may be different from the recollection
4 of others who were participating in that.

5 I understand and I respect the fact that I cannot inquire
6 into work product issues or attorney/client privilege issues.
7 But certainly when he is in a meeting with twelve other
8 people, nine of whom are not related to St. Jude or the joint
9 defense group, like Spire, then I certainly am entitled to
10 know what was said, what he said, and whether he has notes of
11 the meeting, rather than relying upon what Mr. Flory or
12 somebody else who might have been there may or may not
13 remember. And that's the real issue.

14 MR. CAPRETZ: Your Honor, if I may, just a short
15 supplement. And that is the law is quite clear there's a
16 distinction between the times when Mr. Ladner or any general
17 counsel offers business advice amongst the employees of the
18 company versus giving litigation advice in contemplation of
19 litigation. And therefore, we respectfully suggest that this
20 gentleman should be subject to deposition.

21 THE COURT: Mr. Stanley?

22 MR. STANLEY: Your Honor, I think in terms of what
23 the law is clear about, I think it's clear that the law
24 disfavors taking the depositions of in-house counsel. And Mr.
25 Ladner is not only in-house counsel, but he's primarily

1 responsible directing the defense efforts in this litigation.

2 So from our perspective, this is a deposition that
3 probably shouldn't go forward at all. But when we look at the
4 case law, the Shelton case, which we cited in the joint
5 report, sets forth sort of the three requirements, which are
6 the plaintiffs have to establish that there's no other means
7 to obtain the information than to depose the attorney. That's
8 it's relevant and nonprivileged.

9 And in terms of restricting it to, you know, stuff that
10 isn't work product or privilege, I assume that they're going
11 to do that in every deposition. So the fact that they're
12 willing to restrict the deposition that way, it, you know,
13 doesn't help us.

14 And then it says the information is crucial to the
15 preparation of the case. That's their burden to establish.

16 And what I've done for Mr. Angstreich is look at the documents
17 that we produced. They're either sourced from Mr. Ladner, or
18 authored or received by him. And there are three areas where
19 certainly we're willing to put him up for deposition on.

20 But in terms of, you know, if he's listed as a "cc" on an
21 e-mail, or something like that, with nine other people, three
22 of which they can depose, they need to go and depose those
23 people first. And if they can't get the information they want
24 from those people, then they can come back to the Court and
25 ask for Mr. Ladner's depo on those subjects.

1 And as far as, you know, I can't guarantee that Mr.
2 Ladner will come up and testify on some other subject. You
3 know, we'll represent that if that's going to happen, we'll
4 tell them in advance, and we'll put him up for deposition on
5 that subject.

6 But I think the law is very clear, that they have a
7 pretty heavy burden to meet before they can take his depo.
8 And again, we haven't moved for a protective order. What
9 we've agreed to do is put him up for deposition and explain to
10 them what we feel is the proper scope of the testimony, and go
11 from there.

12 MR. ANGSTREICH: Your Honor, if I might respond.

13 If Mr. Ladner is not the author of the document but is
14 merely a recipient, then I have the author's deposition to
15 take as well as other recipients.

16 But we're talking about situations where he participated
17 in conference calls. Where he was not just carbon copied, but
18 an actual participant. Or he wrote the e-mail that he sent to
19 others. Or responded to the e-mail. Those e-mails have been
20 produced to us. They have not been redacted.

21 So clearly, there can't be an argument that there's a
22 privilege there. And we're entitled to inquire into those
23 subject matters.

24 So if the limitation is simply where he is just a "cc" on
25 a document, I don't have a problem limiting it to that. But

1 an active participant in meetings and discussions, and the
2 author of documents, there shouldn't be a privilege. And
3 there can't be a privilege. And if there were, they waived it
4 by giving us the documents.

5 So I think that you can't have it both ways. And you
6 can't have a limited waiver. So if the document was sent to
7 Mr. Ladner, even a "cc," and somehow there's a privilege
8 against taking his deposition about that document, then
9 there's a waiver of it.

10 Now, we're not arguing that they've waived any privilege
11 at this point. All we're suggesting is that where you're an
12 active participant in a meeting, or the author, that we should
13 be able to inquire into it.

14 I don't think that that's a very burdensome aspect. And
15 it clearly flows within the Shelton guidelines. Because the
16 recipient of his communication can only testify to what he
17 understood or believed the communication was. The author of
18 it is the best evidence of what that communication was.

19 And I can't get that from some other person, because all
20 they'll be doing would be guessing as to what he intended by
21 the document. And it clearly is relevant because it was
22 produced in this case, both as part of Rule 26 or in response
23 to our discovery. And it is clearly was nonprivileged because
24 it was produced. And I can't say that there's any single
25 piece of information that's ever crucial, but it's certainly,

1 when you're dealing with discovery, reasonably calculated to
2 lead to the discovery of admissible evidence.

3 MR. CAPRETZ: Well, Your Honor, while the Court's
4 guidance would be most appreciated and of value, no question.

5 May I suggest, this is somewhat premature, it seems quite
6 clear by the federal rules that if the gentleman wants to
7 raise a motion for a protective order, or object during the
8 deposition, they may do so. And then the proper forum is to
9 bring it back before the Court after both parties have an
10 opportunity to brief the issues.

11 But it seems premature to be arguing, other than to ask
12 for the Court's guidance, since there's nothing pending before
13 the Court at the moment.

14 MR. STANLEY: Your Honor, I think when Mr.
15 Angstreich talks about a document that Mr. Ladner authored or
16 whatever that we produced, again, I don't think we're arguing
17 about that, that questioning about that document.

18 I think Mr. Capretz is probably correct. We can let --
19 all we're doing is alerting the Court that there could be an
20 issue. We're going to let the deposition go forward,
21 understanding that we might be back here.

22 THE COURT: Well, I think the deposition should go
23 forward. And certainly the Court will be available to resolve
24 any issues that happen to come up during the deposition that
25 can't be resolved by the parties.

1 I'm not going to impose any preconditions on the
2 deposition. It would seem to me that it should be limited
3 primarily to the three areas that Mr. Stanley has described,
4 but also include the documents that Mr. Angstreich has
5 described as well.

6 MR. ANGSTREICH: Thank you, Your Honor.

7 Your Honor, we've identified five additional witnesses
8 whose depositions we will be scheduling.

9 Two of them again are tied up in waiting for the
10 pathologist to finish the review of the slides. That's under
11 way.

12 But we're trying to target the week of December 9 as at
13 least the time to take most if not all of these witnesses.
14 And I gave that date to Mr. Stanley, so hopefully we'll be
15 able to take care of that. I don't know if we need to do any
16 cross noticing to see if those dates are convenient for Robins
17 Kaplan, but maybe they'll tell us.

18 So that's where we are on that. The other issue relates
19 to the declassification of the confidential designation. The
20 parties are at an impasse with respect to four documents that
21 are identified. St. Jude has agreed now to remove the
22 classification from all of the filings with the exception of
23 four documents.

24 I cannot represent to Your Honor that those four
25 documents are of such an incredibly critical nature that we

1 cannot accept their offer. But I can say to Your Honor that
2 we disagree that the documents are confidential. We disagree
3 that there should be any reason to not declassify all of them.

4 And the problem that we have is that by agreeing that
5 these nonconfidential documents can remain confidential,
6 whether or not that in any way impacts upon our taking a
7 position in the future that a similar document that we don't
8 believe is confidential should be declassified, and having St.
9 Jude say to us, well, that's no documents different than the
10 documents that you agreed in connection with the summary
11 judgment motion were to remain confidential.

12 So if there's no precedential value to our agreement, and
13 it really matters that much to the defendant that these four
14 documents remain confidential, and despite one of my partner's
15 objections to agreeing that something is a little pregnant, we
16 can go with that agreement.

17 MR. STANLEY: Your Honor, I mean we have produced
18 thousands and thousands of documents. And this is I think the
19 first time we've even had a fight about it. We're not -- I
20 don't think we're doing a haphazard job of making our
21 confidentiality designations. We do feel it's important to
22 keep these documents confidential.

23 THE COURT: Having looked at it, I don't think that
24 the defendant is overreaching on these. But I also will not
25 accept an argument that it's precedential value for next time.

1 MR. ANGSTREICH: We appreciate that, Your Honor. So
2 there is no need for a hearing date to be set on that issue.

3 The status of the Canadian litigation is articulated.
4 The Daubert motion has been deferred -- or ruling on the
5 Daubert motion has been deferred to a later date, because,
6 from the, the decision it appears that the Court believes that
7 a substantial aspect of it relates to the merits, and it's
8 inappropriate to resolve it at the class certification stage.

9 We have provided the Court with the latest totals of
10 state and federal filings. And there really isn't any
11 miscellaneous urgent and last-minute items that we need to
12 address.

13 MR. CAPRETZ: Your Honor, may I just address a few?
14 I couldn't hear part of my colleague, pardon me, but they were
15 making an announcement here.

16 But if I may just say in the Canadian litigation --
17 pardon me if I'm repetitive. But if the Court has decided to
18 go forward with the class certification hearing that's going
19 to be set, and we're waiting for a court date with that
20 particular matter.

21 If I may, on just a couple of discovery items. Mr.
22 Angstreich segued pretty quickly there at the front end.

23 But I wanted to mention the privilege log. After much
24 adieu, we have received the privilege log from St. Jude
25 Medical. But Mr. Stanley has advised us it was incomplete, it

1 was I believe labeled volume one. So we're still hoping and
2 believing that we will get the remainder part of the privilege
3 log from the discovery aspect as early as possible.

4 We have some slight disagreement, Your Honor, on the
5 reading of the pretrial order number eleven. The Court may
6 recall, or it will see on examination of that order, that
7 language is somewhat amorphous. It says that St. Jude Medical
8 will arrange for copies, we will pay for the copies.

9 We interpret that to mean that they will provide the
10 copies to us at our cost, a reasonable copying cost. I
11 believe their position is we can get it from the court
12 reporter, and we won't object. So we will need some guidance
13 on that particular point from Your Honor.

14 MR. ANGSTREICH: Your Honor, that relates to whether
15 or not they'll run it through their copying machine and we pay
16 for the copying cost, as opposed to paying for a transcript.

17 And although we have great respect and admiration for all
18 court reporters, and never want to see them not get their due
19 share, we would hope that the MDL could save some money by
20 getting copies from St. Jude at copy rates as opposed to court
21 reporter rates.

22 MR. CAPRETZ: And I would just make a brief comment
23 to the Court on the Ramsey County action. I don't know if the
24 Court has had an opportunity to coordinate with Judge Gearin.
25 But she has set a preemption hearing for January 6 of 2003.

1 There's no future status conference set at this time. There
2 have been some additional case filings, as the Court probably
3 noted from the joint status report. And there are some since
4 that report, some of which may not have been served and St.
5 Jude Medical might not yet be aware of at this particular
6 point in time.

7 THE COURT: Mr. Stanley, did you have a comment on
8 the copy issue?

9 MR. STANLEY: Your Honor, the issue has arisen,
10 basically, they want copies of the depositions that have been
11 taken in the Ramsey County cases. And our position has been
12 we're not under an obligation to make copying. Our obligation
13 is to tell them who the court reporter is, and they can go and
14 get the copies themselves. That's the issue.

15 THE COURT: How much paper are we talking about
16 here?

17 MR. STANLEY: Well, if you count the exhibits, it's,
18 you know, it was a tremendous number of documents. We had
19 probably two days of deposition testimony for each witness,
20 and 50 or 60 multi-page exhibits.

21 THE COURT: Ms. Van Steenburgh.

22 MS. VAN STEENBURGH: Your Honor, just, our office is
23 responsible for keeping all those depo transcripts and the
24 exhibits. There are over 230 some exhibits now, some of which
25 are, you know, at least an inch thick. So that's the number

1 of exhibits. And there are I believe close to ten
2 depositions. Most of them are more than one day. So there
3 are multiple transcripts.

4 MR. ANGSTREICH: Your Honor, I guess what we could
5 do is just do a Rule 34 request for these documents, and then
6 they would have to produce them to us.

7 Certainly, if we are already in possession of the
8 exhibits, we can do that. But I mean they have to supply us
9 copies of it anyway. I mean, why do I have to pay a court
10 reporter to give us copies of exhibits that are the
11 defendant's exhibits to start with? That doesn't make any
12 sense at all. So you're talking about copies of transcripts.
13 And again, why do we have to go to the trouble of going to the
14 court reporter? We'll pay for the cost of copying. It really
15 is a very easy matter for them to run it through the copy
16 machine.

17 MR. STANLEY: Your Honor, if I could point out, Mr.
18 Capretz and Mr. Rudd have several cases in the Ramsey County
19 litigation. They could certainly, you know, they've chosen to
20 attend only one of those depositions, and certainly the
21 deposition transcripts are available to them as parties to the
22 Ramsey County litigation.

23 MR. ANGSTREICH: Your Honor, there's another
24 solution, too. I'm sure they've all gotten ASCII disks from
25 these transcripts. They can just pop it in and make a copy of

1 it. They don't even have to photocopy it. It's a very simple
2 process to do that.

3 And to the extent that we need any specific exhibits
4 because we can't find them, we'll let them know, and we'll pay
5 for the copying of it. But it's certainly a very easy matter
6 to make a copy of an ASCII and supply it to us. We're getting
7 ASCII's in all of our depositions that we're taking here. It
8 certainly would make life easier for us if we could do it that
9 way, rather than go back to the court reporter.

10 THE COURT: I think one of the things that we're
11 trying to do here is to coordinate this as much as possible,
12 and I'm trying to coordinate with Ramsey County as much as
13 possible, too, to make sure that we don't unnecessarily double
14 up in certain areas and add costs to all these proceedings.

15 I think it would be the best practice here to get copies
16 of either the disks or paper copies with plaintiffs paying for
17 the reasonable cost of that. I think that would be the best
18 way to resolve this.

19 MR. ANGSTREICH: Thank you, Your Honor.

20 MR. CAPRETZ: Your Honor, I'm getting close to my
21 time, and I thank you once again for giving me an opportunity
22 to pipe in.

23 But I would ask -- and I take it this is not a harbinger
24 of things to come, Your Honor, but I'm here in the Shiley
25 heart valve matter, and this is ten years. I don't think St.

1 Jude might take that long, but it's the implementation of the
2 global settlement that we entered. So it's going on, and it
3 will go on for some years to come.

4 But we made a determined effort to be there in person.
5 And it's so hard to coordinate schedules, as the Court is well
6 aware. If we could possibly have a couple of status
7 conference dates out, it would be most helpful and make sure
8 we don't get in a conflict with this Court.

9 THE COURT: That's a good thought, Mr. Capretz. And
10 it's certainly fine when you need to participate by telephone
11 like this. But we will be looking at dates to try to get some
12 times lined up.

13 MR. CAPRETZ: Very well. Thank you.

14 MR. ANGSTREICH: That would be the last item would
15 be the scheduling of the next one.

16 THE COURT: Well, the question for December. Do we
17 think we need a conference in person, or shall we try to do a
18 telephone conference in December? I know there's a lot of
19 depositions going on.

20 MR. ANGSTREICH: I would suspect that we should be
21 able to do a telephone one. However, we're going to have the
22 issue of Carbomedics, Sulzer Carbomedics to resolve, and I
23 assume that that's not going to be done by telephone.

24 Although Mr. Lewis might be very appreciative of the ability
25 to do it by telephone.

1 THE COURT: For December, let's set a time that we
2 will plan for a telephone conference. And if any of the
3 parties believe that we need to have a conference in person,
4 we'll switch it into a conference in person.

5 MR. ANGSTREICH: Very good.

6 THE COURT: Mr. Stanley?

7 MR. STANLEY: Just one more matter. I know that
8 they lock the building at 6:00, so I'll be brief.

9 THE CLERK: 5:30.

10 THE COURT: Fortunately, they don't lock you in.
11 The worst problem is if they turn off the heat.

12 MR. STANLEY: Your Honor, we have, it looks like
13 five cases which were filed as class actions originally. And
14 then when the class action was consolidated, only, they only
15 took a few reps. They didn't take the reps from these
16 particular cases. It's the Maronen, Fabre, Macolly, McFadden,
17 and Fox cases.

18 What we always assumed -- Mr. Capretz I think was in here
19 six months ago asking you to dismiss the cases. And we had
20 said, no, please don't do it at this point because we want to
21 collect the medical records to perhaps use them as diversity
22 argument in our class brief. Well, that's all done now.

23 If class certification is denied, it seems like that
24 ruling would apply to these cases. If it's granted, it seems
25 they would be subsumed within the -- class -- sorry. Stumbled

1 there for a minute. And so --

2 MR. CAPRETZ: Your Honor, may I add something?

3 MR. STANLEY: Wait. Can I finish?

4 MR. CAPRETZ: Sure, of course.

5 MR. STANLEY: Thank you.

6 The reason that they're bringing it up here, I mean, we
7 could get them lie, except they're subject to -- if the
8 plaintiff pursue these cases either as individual monitoring
9 cases or even personal injury cases, they're currently subject
10 to the discovery cutoffs that we have. And then we'll have to
11 start working them out taking plaintiff's depo and treaters.

12 So it would be nice to know now, if they don't want to
13 dismiss them, we could put them on some sort of separate track
14 so we don't have to worry about working them up right now, or
15 if we can get them dismissed without prejudice.

16 MR. CAPRETZ: Yes, Your Honor, our firm I think has
17 three of those cases. Mr. Fletcher has one, and Pat Murphy
18 has one.

19 We have asked our legal assistants to work them up and
20 see the status of those claims. We don't have all the
21 information.

22 We did indeed, as Mr. Stanley said, several months ago
23 inquire about discussing this, not quite as Mr. Stanley had
24 said, but we did say let's discuss the dismissal. They did
25 say, as he did say, that, you know, they wanted to -- they

1 thought we should hold off doing anything until we found what
2 happened with the class. And that's still pending.

3 I mean, we still would like the opportunity to possibly
4 have one or more serve as a class rep should the Court for any
5 reason find a problem with any existing class rep in it's
6 forthcoming ruling. And then we are not opposed to putting
7 it, as Mr. Stanley suggests, on a sidetrack. And possibly by
8 the next meeting we could also find out whether or not these
9 people have any individual claims that would need to be
10 asserted and that they would have the opportunity, we would
11 make certain they had the opportunity to take whatever
12 discovery they might need. It would be without prejudice to
13 the defendant.

14 THE COURT: Mr. Angstreich, did you have anything on
15 it?

16 MR. ANGSTREICH: Well, I asked Mr. Murphy's
17 associate what position they had with respect to their case,
18 and she's not prepared to respond.

19 I think maybe we can let this go and extend the deadline
20 with respect to those five plaintiffs by the amount of time it
21 takes to get a resolution as to whether they're going to
22 proceed or not.

23 THE COURT: You mean extend the deadline a number of
24 days from today?

25 MR. STANLEY: Can't we just stay them? And then if

1 Mr. Capretz wants to pursue them, then we'll unstay them.

2 THE COURT: Why don't we try to get this resolution
3 taken care of within the next 30 days. There's still enough
4 time after that to do discovery if it's necessary. But
5 whether they go on to a sidetrack, or Mr. Capretz or others
6 decide that there are individual claims that you would want to
7 examine at a deposition, if we can get that resolved within 30
8 days, that should be enough time.

9 MR. CAPRETZ: Your Honor, that's fair from our
10 perspective.

11 MR. ANGSTREICH: We'll let Mr. Johnson know that.
12 And Mr. Murphy will be in a position to respond, and obviously
13 Mr. Capretz will as well.

14 THE COURT: Okay.

15 MR. ANGSTREICH: Your Honor, we'll get a call trying
16 to schedule the conference call? We're not going to do that
17 now?

18 THE COURT: Let's look at calendars for at least a
19 day, anyway.

20 MR. CAPRETZ: Your Honor, if I may, after the 12th,
21 from our perspective. We are pretty booked the first part of
22 the month.

23 THE COURT: Did you say after the 12th?

24 MR. CAPRETZ: After the 12th.

25 THE COURT: It probably means the week of the 16th

1 sometime. Are there any days that are bad that week?

2 MR. CAPRETZ: The 17th is bad, otherwise it's clear.

3 MR. STANLEY: The 18th and 19th are bad. Could we
4 do it the 16th? If it's just a phone conference.

5 MR. ANGSTREICH: I don't think there will be any
6 problem if it's a phone conference.

7 THE COURT: Let's set at least tentatively the date
8 of the 16th, and you can work with Ms. Gleason on the precise
9 time that works best with everyone's schedules for that day.
10 And if any of you believe that we need to have an in-person
11 conference, that's certainly fine with me. I have a trial
12 going on over that week and the previous week that's going to
13 demand a lot of my time to try to get it done before the
14 holidays.

15 So, but we can work it in if we need to. Just let us
16 know. But we'll plan on the 16th.

17 And then do you want to talk about a January date right
18 now, or --

19 MR. CAPRETZ: If we could, Your Honor, I think that
20 may be wise.

21 THE COURT: We're looking at the week of the 13th.
22 Any problems that week?

23 MR. ANGSTREICH: I have a trial in January. I have
24 to see when it is. I sort of logged off when you said the
25 16th of December.

1 THE COURT: Well, why don't everyone start checking
2 calendars, and Ms. Gleason can work out a date in January with
3 everybody. That sound okay?

4 MR. ANGSTREICH: That's fine, Your Honor.

5 THE COURT: That will be in person for sure. And
6 December maybe we'll just see what comes up on the docket.

7 MR. ANGSTREICH: Very good.

8 THE COURT: Okay. And you're planning on bringing
9 that motion to compel soon?

10 MR. ANGSTREICH: Yes, Your Honor. Hopefully, we
11 will have that in time to either put it on for the 16th by
12 telephone, or -- well, that's when we have to have it. We
13 would like to get that resolved.

14 THE COURT: Okay. Very well. We'll look forward to
15 receiving that.

16 Okay, anything else for today?

17 MR. ANGSTREICH: No, Your Honor.

18 THE COURT: Thank you, everyone. We'll talk to you
19 next month.

20 (Court recessed at 6:05 p.m.)

21

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23

24 CERTIFIED:

25 Karen J. Grufman
 Official Court Reporter